IN THE HIGH COURT OF PUNJAB AND HARYANA, CHANDIGARH.

Civil Revision No. 4944 of 2000
Date of Decision: 1.11.2006

Devi Ram ..Petitioner

Versus

Jawahar Lal and another ..Respondent

Coram: **Hon'ble Mr. Justice H.S.Bhalla**

Present:- Mr. Ram Chander, Advocate,
For the petitioner.

Mr. R.S.Sihota, Advocate,
For the respondents.

H.S.BHALLA, J.

This petition has been filed by the petitioner-tenant challenging the eviction order dated 27.9. 2000 passed against him by the appellate authority, Faridabad, vide which he was granted two months' time to hand over the vacant possession to the respondents of the premises in dispute. The petitioner has further prayed for upholding the order dated 4.12.1996 passed by the Rent Controller, Palwal, vide which the rent petition filed under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as "the Act") by the respondent-landlords was dismissed.

The other facts required for the disposal of this petition are that the respondent-owners sought eviction of their tenant Devi Ram (petitioner herein) from the shop in dispute situated on the G.T. Road Palwal within the Municipal Limits of Palwal on the ground of non-payment of arrears of rent for the period from 5.11.1988 to 4.8.1991. It has been averred in the petition that the said shop was rented out to the petitioner at the rate of Rs.700/- per month along with electricity charges and house tax vide rent note dated

5.5.1988 and since he had failed to deposit the rent with effect from 5.11.1988, therefore, ejectment from the demised shop has been sought. Hence, this petition.

In the written statement filed by the petitioner-tenant, the claim of the respondent-landlords was resisted denying the various pleas raised by them alleging therein that the shop in dispute was taken on rent at the rate of Rs.80/- per month, including the house tax for the last more than 16-17 years. The tenant denied execution of any rent note in favour of the respondent-owners nor did the respondent-owners ever increase monthly rent of the shop in dispute from Rs. 80/- to Rs.700/- per month. It has been maintained in the written statement that he deposed the rent from 1.6.1987 to 31.7.1989 for a period of 26 months at the rate of Rs.80/- per month including house tax amounting to Rs.2,080/- in a petition filed under Section 6-A of the Act on 7.8.1987 before the then Rent Controller, Palwal. It has been further maintained in the written statement that the petitioner again deposited the rent for a period of 13 months with effect from 1.8.1989 to 31.8.1990 at the rate of Rs.80/- per month amounting to Rs.1,010/- by the order of the then learned Rent Controller, Palwal in another petition filed under Section 6-A of the Act on 15.1.1991. It has been specifically pleaded in the written statement that an amount of Rs.1,040/- at the rate of Rs.80/- per month for a period of 12 months, inclusive of house tax was tendered in the proceedings of this petition. However, the respondent-owners had denied to accept the same.

The learned Rent Controller, Palwal, while going through the pleadings of the parties in the petition as well as in the written statement, framed the following issues on 12.3.1992:-

1. Whether the respondent is in arrears of rent as alleged? OPA
2. Relief.

On analysing the oral as well as documentary evidence adduced by the parties, the petition filed by the respondent-owners under Section 13 of the Act was dismissed by the learned Rent Controller, Palwal, holding that the rent note dated 5.5.1988 was never executed by the tenant and that the monthly rent of the premises in dispute was Rs.80/-per month and since that amount had already been deposited by the tenant in the Court, therefore, he was not liable to be evicted from the tenanted premises. On an appeal preferred by the respondent-owners, the appellate authority passed the eviction order against the tenant reversing the findings recorded by the learned Rent Controller in his favour. Feeling aggrieved against the eviction order passed by the appellate authority, the petitioner-tenant has knocked the door of this Court by filing the present revision petition.

I have heard the learned counsel appearing for the parties and have also gone through the record of the case with their assistance carefully.

The entire controversy involved in the instant petition revolves around the rent note dated 5.5.1988, Ex. P-1, and the affidavit, Ex. PW-2/, which are alleged to have been executed by the tenant in favour of the landlords, whereby the rent between them was determined at the rate of Rs.700/- per month, particularly when the said shop was taken on rent again by the tenant, which fact has been mentioned in the said rent note and it has been agreed upon by the tenant to pay rent at the rate of Rs. 700/- per month by executing an affidavit dated 5.5.1988, Ex. PW-2/1 in favour of the landlords, though the execution of both these documents by the tenant has been denied and hotly contested by the learned counsel appearing for the petitioner-tenant by contending that Shri Dharam Pal, Advocate, in whose presence the alleged affidavit was executed and signed by him, was not examined by the landlords in support of their contention. Further, learned

counsel also pointed out this fact before this Court that although the landlords moved an application under Order 41 Rule 27, Civil Procedure Code, before the appellate authority permitting them to examine Shri Dharam Pal, Advocate, by way of additional evidence, but that application was dismissed by the appellate authority by observing this aspect of the matter that since the factum of identification of the tenant by the said advocate was very much in the knowledge of the landlords, therefore, they, now at this stage, cannot be allowed to fill up lacuna in the case. In the light of the contentions, as referred to above, and the observations made by the courts below, the case of the parties, as projected by them, has to be examined minutely on the basis of oral as well as documentary evidence available on the record.

It is an admitted fact between the parties that Devi Ram has been a tenant in the shop in dispute since long. An eviction petition was already pending against him, which was withdrawn by the landlords on 5.5.1988. The case of the landlords is that on 5.5.1988 itself they had come to compromise and the premises was further rented out to the tenant at the rate of Rs.700/- per month vide rent note of even date. An affidavit dated 5.5.1988 in this regard was also executed by tenant Devi Ram at that time. The landlords have made the basis on the rent note dated 5.5.1988, Ex. P-1 and the affidavit dated 5.5.1988, Ex. PW-2/1. Both these documents were scribed by Dewan Uttam Chand (PW-2). The rent note was attested by Ram Chand (PW-1) and Subhash Chand (PW-3).The tenant has denied the execution of both these documents on the ground that they were forged and were never executed and signed by him. The record spells out that both the parties have got the signatures of Devi Ram on these documents and compared them with his specimen signatures. Shri Vijay Rastogi, the Handwriting expert, was examined by the landlords, who stepped into the

witness box as PW-4 and submitted his report dated 20.5.1995, according to which, both these documents were signed by Devi Ram, whereas on the other hand, the tenant examined Shri Som Nath Aggarwal, another expert, who stepped into the witness box as RW-5 and submitted his report dated 2.4.1996, Ex. DW-5/5 mentioning therein that the said documents were not signed by Devi Ram. Both the Experts have submitted their divergent reports as per the choice of their clients, but the learned appellate authority did not take them into consideration.

The learned appellate authority has rightly not taken into consideration the finding recorded by the Rent Controller, who has disbelieved the rent deed by observing this fact that Subhash Chand (PW-3), one of the attesting witness of the rent note, was cousin of the landlords and that the factum of increase in rent was not brought on record in pending eviction petition, which was withdrawn by the landlords on that very day, i.e., 5.5.1988. However, the rent note Ex. P-1, as well as affidavit Ex. PW-2/1 have duly been proved by Dewan Uttam Chand (PW-2). He deposed that these documents were executed by Devi Ram, who had signed the same in his presence after accepting the contents thereof. The scribe had also made entries with regard to execution of these documents in the register maintained by him. In his cross-examination, this witness has admitted that he did not know Devi Ram personally. A perusal of the record further spells out that Ram Chand (PW-1), another attesting witness of the alleged rent note, also stepped into the witness box and he deposed before the trial Court that he knew the parties and the rent note was executed by Devi Ram. From the testimony of both these witnesses, namely, Ram Chand (PW-1) and Dewan Uttam Chand (PW-2), the scribe of the documents, the learned appellate authority has rightly held that the rent note Ex. P-1 and the affidavit, Ex. PW-2/1 were executed by tenant Devi Ram.

Coming to the point of non-examination of Shri Dharam Pal Advocate, before whom the alleged affidavit Ex. PW-2/1 was executed by Devi Ram tenant, which point has been argued valiantly by the learned counsel appearing for the petitioner-tenant before me by contending that the learned appellate authority has committed a grave error in taking into consideration the rent note Ex. P-1 and the affidavit, Ex. PW-2/1, which are alleged to have been executed between the parties without any basis and that of the observation made by the learned Rent Controller in favour of the tenant on this point was disbelieved without any rhyme or reason. This argument of the learned counsel appearing for the petitioner, to my mind, does not find force, inasmuch as, the learned appellate authority has recorded sufficient reasons on the material available on the file to prove the genuineness of the affidavit by observing that " once the landlord has been successful to prove due execution of affidavit Ex. PW-2/1, it was the duty of the tenant to examine Shri Dharam Pal, Advocate, to discredit the affidavit and that the executant of that affidavit was wrongly identified. The onus was on him to discredit the evidence adduced by the landlords to prove the affidavit Ex. PW-2/1." The record further spells out that the tenant has not been able to establish on record by leading cogent and convincing evidence that the said rent note, Ex. P1, and the affidavit, Ex. PW-2/1 were, indeed, not executed and signed by him, as alleged by them, in favour of the landlords, nor did he ever appear before Shri Dharam Pal, Advocate for identification. The tenant has also not been able to prove on record this aspect of the matter by way of leading evidence that Dewan Uttam Chand (PW-2), the scribe of the documents and Ram Chand (PW-1), another attesting witness, were inimical towards him and in fact, these documents were got prepared in forged and fabricated manner with the collusion of the landlords and their witnesses and in such circumstances, no reliance

should have been placed upon testimony of the witnesses examined before the learned Rent Controller. Looking the case of the parties from every angle, I have come to a conclusion that both these documents, i.e., rent note Ex. P-1 and the affidavit PW-2/1 were executed by the tenant in favour of the landlords and a sum of Rs. 700/-per month was determined in between the parties as rent of the demised shop when it was taken on rent again by the petitioner-tenant and since the tenant has tendered the rent short in the tender proceedings conducted before the learned Rent Controller, therefore the eviction order was rightly passed against him by the learned appellate authority reversing the finding made by the learned Rent Controller. I am in full agreement with the observations made by the learned appellate authority and in such like circumstances, I do not find any reason to take a divergent view than the one taken by it. Thus, the finding recorded by the learned appellate authority under issue No.1 is hereby affirmed and does not call for any interference.

No other point has been advanced or survives for consideration.

For the reasons stated above, the petition filed by petitioner fails and is hereby dismissed. The petitioner-tenant is directed to hand over the vacant possession of the shop in dispute to the respondents, within a period of two months from today, failing which, the respondents would be at liberty to avail their remedies, that may be available under the law to seek possession of the demised premises from the tenant.

1.11.2006 (H.S.BHALLA)
VK JUDGE